IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3212 of 2000

with

SPECIAL CIVIL APPLICATION No 12346 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT VIDYAPITH

Versus

SANMUKHLAL BHAICHANDLAL KAYASTH

Appearance:

1. Special Civil Application No. 3212 of 2000
   MR UDAYAN P VYAS for Petitioner No. 1-2
   MRS DT SHAH for Respondent No. 1-4
   RULE SERVED for Respondent No. 5

2. Special Civil Application No.12346 of 2000
   MRS DT SHAH for the petitioners.
   MR GM Joshi for respondent No.1.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 14/10/2004

ORAL JUDGEMENT

Special Civil Application No.3212 of 2000 has been filed by the petitioner-employer challenging the judgment and order dated 6th December 1999 passed by the Gujarat Universities Services Tribunal while disposing of Application No.5/99 field by the respondents Nos.1 to 4 herein by which the Tribunal was pleased to direct the petitioners to place respondent Nos.1 to 4 in certain pay-scales applicable to certain categories of employees working in the Gujarat University. While giving such directions, the Tribunal had confined its retrospective effect to the period of three years preceding the date of filing of the application. The employees concerned, therefore, have filed Special Civil Application No.12346 of 2000 in so far as the said decision is against them and have prayed for the effect of the direction for being granted the pay-scales from the very inception.

2. In a detailed judgment, the Tribunal has considered the rival submissions and has come to the conclusion that respondent Nos.1 to 4 in Special Civil Application No.3212 of 2000 were entitled to better pay-scales than those being offered by the petitioners. Consequently, directions as mentioned above came to be issued.

3. The Tribunal in the impugned judgment has noted that from 1975 onwards, the employees were being paid on the basis of rules of minimum wages in force in the State of Gujarat and there is no dispute about this fact between the parties. The case of the employees was that they should be treated on par with the employees working in the Press of the Gujarat University for the purpose of giving pay-scales. It is contended by the counsel appearing for the employees that alternatively, the employees had also prayed that they may be given scales as admissible to other employees of the Gujarat Vidyapith, i.e. employer. She had submitted that the four employees concerned were employed in the Press run by the Gujarat Vidyapith and they were isolated posts and that therefore, it was not possible to directly compare the pay-scales of these posts with any other staff members of the Vidyapith.

4. In the judgment under challenge, the Tribunal

made the following observations :

"75. As applicant No.1 was holding the post of Compositor, his comparison is sought with the post at Sr.No.12, being the post of Assistant Compositor and it is canvassed to award him the pay scale of Rs.260-360-EB-430. In the same manner for applicant No.2, comparison is sought with the post at Sr.No.13. In the same manner, for applicant No.3, comparison is sought with the post at Sr.No.12. In the same manner for applicant No.4, the comparison is sought with the post at SR.No.15. On the basis of this, it is submitted that applicants are required to be awarded the pay scales, as discussed above, from the document at page 83 and 84 of the record of the case. It is prayed to award the pay scales to the applicants at par with the pay scales of employes, working with Gujarat University and to establish that what are the pay scales of the employees in Gujarat University, my attention is drawn to the resolution of Government of Gujarat, appears to have been issued on 23.6.1976, by which recommendations made by Gujarat State Second Pay Commission, in respect of pay scales, and other conditions of service of the employees of the various universities, situated in Gujarat are being considered by the Government. From page 305 of the record of the case, it is submitted that as the applicant No.1 was compositor, he requires to be awarded the pay scale of Rs.260-430. As applicant No.2 was holding the post of "Boiler", he requires to be extended the pay scale of "Gallyman Attendant(1), being Rs.200-250. In the same manner, it is pointed out that applicant No.3 was holding the post of "Compositor", he requires to be awarded the pay scale of Rs.260-430, and as applicant No.4 was holding the post of "Machineman', he requires to be awarded the pay scale of Rs.350-560. Nothing is pointed out by the applicants to prove that what pay scales were offered to other employees in the Press, as except these four applicants, there were no other employees, working at the relevant time on the posts, which applicants were holding respectively. Not only that, to prove the case alternatively, even Vidhyapith has not suggested any pay scale, and has stuck over to the argument that applicants are not entitled for any pay scale. It appears from the prayer clause of the

petition that petitioners have prayed to award the payscale of Rs.350-400, but on what basis, is not clear. It appears from page 78 of the record of the case that "Proof Reader" was given the pay scale of Rs.330-560 from 1.1.73 by Gujarat Vidyapith. It clearly appears to me that the posts, which applicants were holding, cannot be compared with the post of "Proof Reader", as the same is considered to be higher post, than what applicants were holding. Nothing is produced on the record of the case to establish in favour of the applicants that what kind of work the persons holding the posts in Gujarat University, were doing and drawing the salary, and what applicants were doing and seeking at par with them. From the affidavit filed in favour of applicants, at page 320 of the record of the case, and from page 47, being Anenxure-B, produced by Vidyapith, and from page 305, showing the pay scales of the employees of Gujarat University Press, it appears that applicant No.1, Sanmukhlal, is 'B' Grade Compositor, whose case can be compared with "Compositor" of Gujarat University, drawing the scale of Rs.260-430. So far as applicant No.2, Hasmukhbhai is concerned, he was holding the post of 'D' Grade Boiler. So far as such posts is concerned nothing appears in the list of posts of Gujarat University, but from the arguments gathered, he can be compared with the post of "Gallyman Attendant(1)", whose case can be compared with for the pay scale of Rs.200-250. So far as applicant No.3, Nitinbhai is concerned, he was holding the post of "B" Grade Compositor, whose case can be compared with the post of Compositor in Gujarat University, drawing the scale of Rs.260-430, and applicant No.4, Behcharbhai, was holding the post of 'B' Grade Tradelman, whose post can be compared with "Machineman" 'B' drawing the pay scale of Rs.350-560. It appears that document, showing the pay scales of the employees of Gujarat University Press, is produced by the applicants vide list, Exh.31. It further appears that this is not controverted by the Vidhyapith, either by filing an affidavit on the record of the case, or by producing some another document to show the different pay scales, then suggested by the applicant in support of their case. It appears from the affidavit filed by Gujarat Vidhyapith, vide Exh.50 that nothing regarding the pay scales, suggested by the applicants, at par with

the employee of Gujarat University is being disputed. In that case of the circumstances, it appears to me that, in view of documents at page 81 and 82 when Vidhyapith itself has tried to make the service conditions of its employees, comparable with the employees of Gujarat University, the pay scales are required to be ordered to be extended and the same can be on above stated pay-scales of Gujarat University."

In para 83 of the judgment, the Tribunal observed that "nothing is produced by the Gujarat Vidyapith on the record of the case to establish that the demand of the applicants at par with the minimum pay of the pay-scales, which employees of Gujarat University, holding the similar kind of posts, are getting, is not proper by producing any material on the record of the case, or the pay scales of any other universities situated in the State of Gujarat". In para 92 of the judgment, the Tribunal made the following observations :

"92. Except what is stated in this order, nothing than the same is submitted before me by the parties in the subject matter. From the above discussion in this order, it clearly appears that applicants are required to be awarded the pay scales, and when they have relied on the pay scales enforced by Gujarat University, considering the same is required to be granted.

Applicant No.1 was holding the post of "Conpositor B", applicant No.2 was holding the post of "Boiler-D", applicant No.3 was holding the post of "Compositor-B", applicant No.4 was holding the post of "Tradelman-B". Comparing these posts with the posts, appearing in the Resolution, passed by the Government of Gujarat, dtd. 23.6.1976, and from the list of posts for Press, on page 293, being internal page No.5 of the resolution, and considering the page no.305 produced on the record of the case, by which the benefit of Fourth Pay Commission came to be extended, it appears that, the post of 'B' Grade Compositor does not appear. What appears in the Resolution, is the posts of Junior Compositor, and Assistant Compositor. So far as the post of 'Boiler' is concerned, the same does not appear at all in Gujarat University for which I am told by both the parties jointly that the same post can be compared with the post of "Gallyman Attendant (2)" available in the Gujarat

University. So far as the post of "Tradelman-B" is concerned, which one of the applicants is holding, such kind of post does not appear in the resolution of the Government and in Gujarat University, but it is submitted that the same can be compared with the post of 'Machineman-B".

For the post of "Compositor-B", at the most it can be said that the same can be compared with the post of "Assistant Compositor" of Gujarat University. So far as the post of "Boiler" is concerned, the same can be compared with "Gallyman Attendent(2)", and so far as the post of "Tradelman-B" is concerned, the same can be compared with the post of "Machineman-B""

In para 93, the Tribunal was pleased to observe as follows:

"93. From the whole of the record, it appears that though, applicants have prayed for granting pay scale of Rs.350-400, nothing is produced on the record of the case to justify the said pay scale. Not only that, nothing appears from the record of the case to show that the posts, which applicants were holding, can be said to be at par with the posts available in the Press on the establishment of Gujarat University. It is orally submitted submitted that applicant No.1, Sanmukhlal, was "B Grade Compositor" and , therefore, he can be compared with the post of "Assistant Compositor", having pay scale of Rs.105-182 with effect from 1.1.73. It is further submitted that applicant No.2, Hasmukhlal Bachubhai was holding the post of "Boiler-D", and, therefore, his pay scale should be equal to the post of "Gallyman Attendant(2), being pay scale of Rs.90-175 with effect from 1.1.73. It is further submitted that applicant No.3, Nitin R. Bhavasar, was holding the post of "Compositor-B", and, therefore, his post can be said to be equal to the post of "Assistant Compositor" in the pay scale of Rs.105-182 at par with applicant No.1. So far as applicant No.4, Behcharbhai Bharvad is concerned, it is submitted that he was holding the post of "B" Grade Tradelman, whose post can be compared with the post of 'B' Grade Machineman having the pay scale of Rs.125-235 with effect from 1.1.1973."

5. In view of the above observations, the Tribunal was pleased to give the following observations:

"95. Therefore, in view of the above discussion in this order, as discussed above, considering the posts, which applicants were holding and equivalent posts sanctioned, which are appearing in the Press of Gujarat University, Opponent Nos.1 and 2 are hereby directed to extend the pay scale of Rs.260-430 of "Assistant Compositor" to applicants Nos.1 and 3, and pay scale of Rs.350-560 of "Machineman-B" to applicant No.4 an pay scale of Rs.200-233, being pay scale of "Gallyman Attendant", appearing on p.294 of the record, being minimum pay in the pay scale, to applicant No.2, with effect from 1.1.73,treating the same notionally and revising the same, as if that they got the same in the relevant year till the applicants were in job by paying the arrears of the pay scales within three years anterior to the date of filing of this petition, i.e. 4.3.85, meaning thereby with effect March, 1982."

6. In the case of State of Haryana v. Tilak Raj, (2003) 6 SCC 123, the Hon'ble Supreme Court observed that for applying the principles of 'equal pay for equal work', it requires complete and wholesale identity between a group of employees claiming identical pay scales and others who have already earned such pay scales and it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination. It was further observed that the problem about equal pay cannot always be translated into a mathematical formula. In the said decision while dealing with the case of daily-wagers claiming parity with the wages of regularly selected staff while, turning down the request, the Hon'ble Supreme Court held that, however, such employees are entitled to minimum wages as prescribed by the State Government.

7. In the decision in Government of W.B. v. Tarun K. Roy, (2004) 1 SCC 347, the Hon'ble Supreme Court observed that the principle of "equal pay for equal work" does not automatically apply on the basis of identicalness of work irrespective of educational qualifications, source of recruitment and other relevant considerations.

8. In the decision in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72, the Hon'ble Supreme Court observed that fixation of pay scale and claim to parity in pay are functions of the

executive and while taking decision in this behalf, several relevant factors have to be taken into consideration and courts interfere only when they find such a decision patently irrational, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. It was also observed by the Hon'ble Supreme Court that where the order fixing the pay scale is found unsustainable, instead of granting a particular pay-scale, ordinarily court should direct the authority concerned to reconsider the matter. In a recent decision reported in 2004 (2) GLH 50 (State of Gujarat v. Saurashtra Mazdoor Sangh), a Division Bench of this High Court had also taken similar view.

9. In view of the above judicial pronouncements, it is not possible to sustain the order of the Tribunal. As noted above, the Tribunal had in fact come to the conclusion that there is no material on record to compare the duties and responsibilities of the employees concerned with that of other employees working in the University. When two sets of employees are working in entirely different set up, it is not possible to compare the pay-scales without regard being had to the educational qualifications required for the posts in question, kind of duties to be performed and number of such other relevant factors. The Tribunal, in my view, without considering any of the relevant factors for comparing the pay-scales jumped to the conclusion that the employees would be entitled to certain pay-scale available to some other employees, nomenclature of which posts was also not similar to the employees of the petitioner Vidyapith. Thus, the exercise was undertaken by the Tribunal without any basis and in the entire lengthy judgment, I do not find any justification which could stand the test of law to uphold the decision. As noted earlier, since the employees concerned were being paid at the minimum wages prescribed by the State Government, the petitioner did not breach any law. If the Tribunal had any doubt about the reasonableness of the payment being made, at best, the Tribunal could have remanded the issues to the Vidyapith for fresh consideration, but could not have, extending its jurisdiction and applying the principles of sympathy, provided for grant of pay-scales of wholly unrelated and incomparable category of employees without there being any material whatsoever in support thereof. I, therefore, find that the decision of the Tribunal cannot be sustained and therefore is required to be quashed and set aside.

10. Though the contention was taken in the petition regarding the maintainability of the application before the Gujarat Universities Services Tribunal, in view of the binding decision dated 28.6.99 of the learned single Judge of this High Court in Special Civil Application No.12987 of 1994 (Budhabhai Naranbhai Makwana v. Gujarat Vidyapith), counsel for the petitioners is not in a position to sustain the said contention.

11. The counsel for the respondents-employees has alternatively submitted that the employees should get wages at par with other employees of the Vidyapith. The employees themselves conceded that the posts held by them were isolated posts and there were no comparable posts. For want of comparable posts, the Tribunal could not have granted pay parity and, in my view, rightly the Tribunal has not adopted that logic.

12. In the result, Special Civil Application No.3212 of 2000 is allowed. The impugned decision dated 6th December 1999 of the Tribunal is quashed and set aside. Rule is made absolute accordingly with no order as to costs. In view of the setting aside of the impugned judgment of the Tribunal, Special Civil Application No.12346 of 2000 is required to be rejected and it is hereby rejected. Rule is discharged with no order as to costs.

13. At this stage, counsel for the petitioners in Special Civil Application No.3212 of 2000 points out that pursuant to the interim directions passed by this Court, the petitioners have deposited 50 per cent of the amount payable to the employees before this Court. In view of allowing of the petition of the employer, office is directed to refund the amount deposited by the petitioners by an account payee cheque. This direction, however, at the request of the learned counsel Mrs.D.T.Shah, is stayed for a period of four weeks from today.

(Akil Kureshi, J.)
(vjn)